Toffoloni v. LFP Publishing Group, LLC Doc. 60

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrarix and Personal Representative of the ESTATE OF NANCY E. BENOIT,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION FILE NO. 1:08-CV-0421-TWT
LFP PUBLISHING GROUP, LLC, d/b/a Hustler Magazine, MARK SAMANSKY, an Individual, and other distributors and sellers of, Hustler Magazine, as Defendants X, Y, and Z,	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF ADDITIONAL FACTS WHICH ARE MATERIAL AND PRESENT A GENUINE ISSUE OF TRIAL

COMES NOW, Plaintiff, Maureen Toffoloni, as Administratrix and Personal Representative of the Estate of Nancy E. Benoit ("Plaintiff"), through counsel, and files this her Response to Defendant's Statement of Additional Facts Which are Material and Present a Genuine Issue of Trial with this Court as follows:

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(1)

whether Plaintiff is the real-party-in-interest with legal standing to assert a posthumous claim for right of publicity on behalf of Ms. Benoit, or whether that right belongs to some other individual(s) or entity pursuant to a conveyance such as a license or assignment;

This fact is not genuinely disputed. Plaintiff has shown through the undisputed testimony of Maureen Toffoloni that she is the real party-in-interest in this case. Defendant has done nothing to refute Plaintiff's evidence.

(2)

whether, as alleged but not yet proven, Ms. Benoit did not in fact sign a release or otherwise authorize the publication of the images;

This fact is not genuinely disputed. The Eleventh Circuit Court of Appeals in the case of *Toffoloni v. LFP Publishing Group, LLC d/b/a Hustler Magazine*, 572 F3d 1201 (11th Cir. 2009) has already decided this issue.

(3)

whether exploitation of her image was done by Ms. Benoit in her lifetime;

This fact is not genuinely disputed. The Eleventh Circuit Court of Appeals in the case of *Toffoloni v. LFP Publishing Group, LLC d/b/a Hustler Magazine*, 572 F3d 1201 (11th Cir. 2009) has already decided this issue.

(4)

whether Ms. Benoit or Plaintiff ever intended or intends to exploit commercially the images at issue in this lawsuit.

This fact is not genuinely disputed. The Eleventh Circuit Court of Appeals in the case of *Toffoloni v. LFP Publishing Group, LLC d/b/a Hustler Magazine*, 572 F3d 1201 (11th Cir. 2009) has already decided this issue.

Respectfully submitted November 17, 2009.

/s/ Richard P. Decker

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrarix and Personal Representative of the ESTATE OF NANCY E. BENOIT, Plaintiff, v. LFP PUBLISHING GROUP, LLC, d/b/a Hustler Magazine, MARK SAMANSKY, an Individual, and other distributors and sellers of, Hustler Magazine, as Defendants X, Y, and Z, Defendants.	)))))))))))))))))	CIVIL ACTION FILE NO. 1:08-CV-0421-TWT

CERTIFICATE OF SERVICE

This is to certify that on November 17, 2009, I have electronically filed the foregoing Plaintiff's Response to Defendant's Statement of Additional Facts Which Are Material and Present a Genuine Issue of Trial with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorney(s) of record:

James Clifton Rawls, Esq.

S. Derek Bauer, Esq.
Barry J. Armstrong, Esq.
Darrell Jay Solomon, Esq.
Jeffrey F. Reina, Esq.
Paul J. Cambria, Esq.

and by placing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

William M. Feigenbaum, Esq.
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/s/ Richard P. Decker
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